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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,599	02/08/2002	Akikazu Yoshikawa	AA-542	2691

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

LAMM, MARINA

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 09/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/071,599

Applicant(s)

YOSHIKAWA ET AL.

Examiner

Marina Lamm

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-23 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/26/04 has been entered.
2. Claims pending are 1-11 and 13-23. Claim 12 has been cancelled. Claims 1 and 21 have been amended. Claims 16 and 17 have been withdrawn from consideration as directed to non-elected species.

***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-5, 10, 11, 15, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al. (US 4,331,653).

Brown et al. teach aerosol compositions containing 0.5-25% of an acidic metallic salt such as aluminum sulfate and aluminum potassium sulfate. See Claims 16-18; Examples I and II. The compositions of Brown et al. also contain nonionic emulsifiers such as polyoxyethylene derivatives of stearic acid. See col. 4, lines 14-21. The exemplified compositions are free from aluminum chlorohydrate as required by Claims

3-5. See Examples I and II. The compositions of Brown et al. will inherently neutralize at least 50% or 60% of allergen containing proteins because they contain the same ingredient in the same amounts as claimed in the instant invention.

Thus, Brown et al. teach each and every limitation of Claims 1-5, 10, 11, 15, 18 and 19.

5. Claims 1, 2, 9-11, 15, 18-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Tvedten (WO 98/30236).

Tvedten teaches aqueous biological pesticide compositions containing aluminum compounds such as aluminum chloride, aluminum sulfate and aluminum nitrate. See p. 7; Claim 68. The concentration of aluminum ion in the compositions of Tvedten is about 1% w/v or less, preferably about 0.4% w/v. See p. 7. The compositions of Tvedten may contain additional ingredients such as citric or lactic acid, surfactants, etc. and may be applied to various substrates, including articles of furniture by spraying. See pp. 4, 6, 8. The compositions of Tvedten are effective against dust mites, carpet beetles, fabric pests and are effective at decreasing or eliminating the incidence of allergic reactions to dust. See p. 10. The compositions of Tvedten will inherently neutralize at least 50% or 60% of allergen containing proteins because they contain the same ingredient in the same amounts as claimed in the instant invention.

Thus, Tvedten teaches each and every limitation of Claims 1, 2, 9-11, 15, 18-23.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 9, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al.

Brown et al. applied as above. The reference teaches that suitable acidic metallic salts include zinc, aluminum and iron salts. See col. 5, lines 1-2. Further, the reference teaches that "[c]ombinations of salts may also be employed." See col. 4, lines 8-9. Brown et al. do not explicitly teach the claimed combination of aluminum sulfate and zinc ions. However, the reference clearly encompasses such combination. See above. Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use a combination of aluminum sulfate and a zinc salt in compositions of Brown et al. with a reasonable expectation of beneficial results such as improved styptic properties of the composition.

8. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. in view of Stewart (US 5,916,541).

Brown et al. applied as above. The reference does not teach polyquaternium film forming polymers of the instant claims. However, it is known in the art of topical compositions to employ the claimed polyquaternium polymers as film forming polymers. See, for example, Stewart at col. 5, line 50-col. 6, line 28. Film formers provide waterproofing and stay-on properties to the compositions. See col. 5, lines 50-52. One

of ordinary skill would have been motivated to employ polyquaternium film forming polymers of Stewart for the topical compositions of Brown et al. with a reasonable expectation of beneficial results such as improved adherence to the skin and waterproofing properties of the compositions.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

### ***Response to Arguments***

9. Applicant's arguments filed 7/26/04 have been fully considered but they are not persuasive.

10. With respect to the Brown et al. reference, the Applicant argues that the reference does not teach sprayable aqueous liquid compositions. "The compositions of Brown are disclosed in the form of a stable lotion or cream." See p. 6 of the Remarks. In response, Brown et al. explicitly teach that their compositions are preferably dispensed from aerosol containers. See col. 6, lines 49-51; Claims 16 and 17. The exemplified compositions contain as much as 72.4% of water. See Example II.

11. With respect to the Tvedten reference, the Applicant argues that "[t]here is no disclosure or suggestion in Tvedten regarding the relative amount of aluminum ion provided as a salt or an anion." See p. 7 of the Remarks. In response, Tvedten explicitly teaches that preferably the majority of the aluminum will be present in the form of dissolved aluminum ion. The reference also contemplates the situations, where "substantially all of the aluminum is present as dissolved  $\text{Al}^{3+}$ ." See p. 7, lines 30-33.

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With respect to the Applicant's argument that "Tvedten discloses a nearly limitless amount of aluminum compounds," it is noted that only those compounds disclosed by Tvedten that are soluble (e.g. aluminum chloride, aluminum chlorohydrate, aluminum sulfate and aluminum nitrate) will produce  $Al^{3+}$ .

***Conclusion***

12. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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8/28/04

*Michael G. Hartley*  
MICHAEL G. HARTLEY  
PRIMARY EXAMINER